

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96 45
	)	
Petition by RCC Minnesota, Inc.,	)	
Pursuant to 47 C.F.R. Section	)	
54.207(c), for Commission	)	
Agreement in Redefining the Service	)	
Areas of Rural Telephone Companies	)	
In the State of Maine	)	

**PETITION OF RCC MINNESOTA, INC., FOR REDEFINITION  
OF RURAL TELEPHONE COMPANY SERVICE AREAS**

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June 24, 2003

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## **Summary**

RCC Minnesota, Inc. (“RCC”) requests the Commission’s concurrence with the Maine Public Utilities Commission’s (“MPUC”) proposal to redefine rural local exchange carrier (“LEC”) service areas pursuant to the process set forth in Section 54.207(c) of the Commission’s rules. The MPUC recently designated RCC, a wireless carrier providing service in primarily rural areas of Maine, as an eligible telecommunications carrier (“ETC”) for purposes of receiving federal high-cost support. Because RCC’s FCC-licensed service territory does not correlate with rural LEC service areas, the MPUC has proposed that each partially-covered rural LEC service area should be redefined such that each wire center is a separate service area.

The proposed redefinition is warranted under the Commission’s competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states. Unless the relevant LEC service areas are redefined, RCC will be unable to use high-cost support to improve and expand its service to consumers in many areas of its licensed service territory. As the Commission and several states have consistently held, competitive and technological neutrality demands the removal of these artificial barriers to competitive entry. Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service in that it minimizes or eliminates cream-skimming opportunities, duly recognizes the special status of rural carriers under the 1996 Act, and does not impose undue administrative burdens on LECs.

The MPUC’s proposed redefinition is well-supported by the record at the state level, and all affected parties were provided ample opportunity to ensure that the Joint Board’s recommendations were taken into account. Accordingly, RCC requests that the Commission grant this Petition expeditiously.

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OF RURAL TELEPHONE COMPANY SERVICE AREAS**

RCC Minnesota, Inc. (“RCC”),<sup>1</sup> a wireless carrier recently designated as an eligible telecommunications carrier (“ETC”) in Maine, hereby submits this Petition seeking the FCC’s agreement with the decision of the Maine Public Utilities Commission (“MPUC”) to redefine the service areas of the rural incumbent local exchange carriers (“ILECs”) listed in Attachment A hereto. As set forth below, classifying each individual wire center of the affected LECs as a separate service area will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural Maine consumers.

**I. BACKGROUND**

Pursuant to Section 214(e) of the Communications Act of 1934, as amended (the “Act”), state commissions generally have authority to designate carriers that satisfy the requirements of

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<sup>1</sup> RCC is a Commercial Mobile Radio Service (“CMRS”) carrier providing service in Maine under the trade name “Unicel”. RCC is authorized by the FCC as the “B Band” cellular carrier in the Bangor, Maine, Metropolitan Statistical Area (“MSA”) and the Maine 1, Maine 2 and Maine 3 Rural Service Areas (“RSAs”).

the federal universal service rules as ETCs and to define their service areas.<sup>2</sup> In rural areas, service areas are generally defined as the ILEC's study area. However, the Act explicitly sets forth a process whereby a competitive ETC may be designated for a service area that differs from that of the incumbent LEC. Specifically, Section 214(e) of the Act provides:

... "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.<sup>3</sup>

The FCC and the Federal-State Joint Board on Universal Service ("Joint Board") have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural LEC's study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.<sup>4</sup> In order to address this barrier to competitive entry, the FCC and state commissions have applied the analysis contained in Section 214(e) and concluded that it is necessary and appropriate to redefine the LEC service areas along wire center boundaries to permit the designation of competitive ETCs in those areas.<sup>5</sup>

On June 7, 2002, RCC applied to the MPUC for designation as an ETC for the purpose of receiving federal universal service support. RCC requested that its ETC service area be defined

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<sup>2</sup> 47 U.S.C. § 214(e).

<sup>3</sup> *Id.* See also 47 C.F.R. § 54.207(b).

<sup>4</sup> See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, 15 FCC Rcd 9924, 9927 n. 40 (1999) ("Washington Redefinition Order"), citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) ("Joint Board Recommended Decision").

<sup>5</sup> See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, DA 01-409 (rel. Feb. 15, 2002) (effective date May 16, 2002); *Washington Redefinition Order*, *supra*, 15 FCC Rcd at 9927-28.

to be coterminous with its FCC-licensed cellular geographic service area (“CGSA”). Because, as a wireless carrier, RCC is licensed to serve an area that does not match the service areas of the affected ILECs, RCC requested the redefinition of certain rural ILEC service areas, pursuant to the process provided under Section 214(e)(5) of the Act, to permit its designation in rural areas not completely covered by its CGSA.

On February 28, 2003, RCC and the Office of the Public Advocate submitted to the MPUC a Stipulation intended to resolve outstanding issues in the ETC designation proceeding. The Stipulation provided, in pertinent part, that RCC should be designated as an ETC immediately in areas served by non-rural ILECs and in rural ILEC service areas entirely covered by RCC’s licensed service area.<sup>6</sup> The Stipulation further provided for the redefinition of the rural ILEC service areas that are only partially covered, such that each wire center constitutes a separate service area.

On April 17, 2003, the Hearing Examiner in the case issued a report (“Examiner’s Report”) concluding that a grant of RCC’s request for designation as an ETC and would serve the public interest and that “the result reached by the Stipulation is both reasonable and consistent with Maine law and Commission rules.”<sup>7</sup> The Examiner’s Report largely adopted the service area provisions specified in the Stipulation. Specifically, RCC’s designation was to become effective immediately in non-rural areas served by Verizon Maine (“Verizon”) and in rural areas where RCC’s service area covered the ILEC service area completely. Regarding the rural areas only partially covered by RCC’s licensed service territory, the Examiner’s Report recommended redefinition along wire center boundaries where RCC’s service ILECs “where

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<sup>6</sup> Stipulation at p. 2.

<sup>7</sup> Examiner’s Report at p. 12.

RCC does not serve the full study area but does completely cover some of the ILEC's individual wire centers".<sup>8</sup> However, in cases where RCC's service covered only portions of wire centers, the Examiner's Report concluded that "the most prudent course of action is to support a RCC petition to the FCC to waive the requirement that RCC serve these full exchanges."<sup>9</sup> Because no such waiver is needed under current FCC rules and policies, RCC filed Comments and a single Exception on the Examiner's Report, requesting that the MPUC's final order apply a redefinition analysis that properly recommends redefinition of all rural ILEC service areas, including those with only partially covered wire centers.<sup>10</sup> RCC noted in its Comments that such an analysis is consistent with FCC precedent as set forth in its order designating RCC Holdings, Inc., as an ETC in Alabama.<sup>11</sup>

On May 13, 2003, the MPUC entered an Order ("MPUC Order") adopting, in part, the Examiner's Report and granting RCC's request for ETC status throughout its licensed service area in Maine.<sup>12</sup> A copy of the MPUC Order is provided as Attachment B hereto. In particular, the MPUC granted RCC's Exception, agreeing that:

The Examiner's Report incorrectly stated that . . . a waiver from the FCC was necessary to certify RCC in areas where it only covers part of an exchange. In its Exceptions, RCC correctly pointed out that the FCC found that wireless carriers need only service those portions of a wire center covered by . . . their federal wireless license.<sup>13</sup>

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<sup>8</sup> *Id.* at p. 17.

<sup>9</sup> *Id.* at p. 18.

<sup>10</sup> Comments and Exception of RCC Minnesota, Inc. (filed Apr. 29, 2003).

<sup>11</sup> *RCC Holdings, Inc.*, DA 02-3181 (W.C.B. rel. Nov. 27, 2002) (app. for rev. pending) ("*RCC Alabama ETC Order*").

<sup>12</sup> *RCC Minnesota, Inc. et al.*, Docket No. 2002-344 (May 13, 2003).

<sup>13</sup> *Id.* at p. 11 n.21 (citation omitted).

Thus, the MPUC Order specified that the rural ILEC service areas that are not entirely found within RCC's licensed service area should be redefined into service areas that are coterminous with wire center boundaries, such that each wire center constitutes a separate service area.<sup>14</sup> The MPUC Order further directed RCC to petition the FCC for concurrence with the service area redefinitions set forth in the MPUC Order. RCC now submits this Petition to obtain the FCC's concurrence, in accordance with the MPUC Order, the Act and the FCC's rules.

## **II. DISCUSSION**

The MPUC's decision to redefine rural LEC service areas is consistent with FCC orders, the recommendations of the Joint Board, and the competitively neutral universal service policies embedded in the Act. Specifically, the redefinition requested in this proceeding will promote competition and the ability of rural consumers to have similar choices among telecommunications services and at rates that are comparable to those available in urban areas.<sup>15</sup> The proceeding provided all affected parties with an opportunity to comment on the proposed redefinition, and the Examiner's Report and the MPUC Order fully considered and addressed the parties' arguments on this subject. Accordingly, the redefinition proposed herein is well-supported by the record at the state level, and the MPUC's reasoned Order provides the FCC with ample justification to issue a prompt concurrence.

### **A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.**

Congress, in passing the 1996 amendments to the Act, declared its intent to "promote competition and reduce regulation" and to "encourage the rapid deployment of new

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<sup>14</sup> See *id.* at p. 11.

<sup>15</sup> See 47 U.S.C. § 254(b)(3).



telecommunications technologies.”<sup>16</sup> As part of its effort to further these pro-competitive goals, Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.<sup>17</sup> In furtherance of this statutory mandate, the FCC has adopted the principle that universal service mechanisms be administered in a competitively neutral manner, meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.<sup>18</sup>

Consistent with this policy, the FCC and many state commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.<sup>19</sup> Recently, for example, the FCC granted a petition of the Colorado Public Utilities Commission (“CPUC”) for a service area redefinition identical to the redefinition proposed in this proceeding.<sup>20</sup> In support of redefining CenturyTel’s service area along wire center boundaries, the CPUC emphasized that “in CenturyTel’s service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . [T]his constitutes a significant barrier to entry.”<sup>21</sup> The FCC agreed and, by declining to open a proceeding, allowed

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<sup>16</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

<sup>17</sup> See 47 U.S.C. § 214(e)(2).

<sup>18</sup> See *First Report and Order*, *supra*, 12 FCC Rcd at 8801. Competitive neutrality is not among the issues recently referred by the FCC to the Joint Board. See *Federal-State Joint Board on Universal Service*, FCC 02-307 (rel. Nov. 7, 2002) (“*Referral Order*”), available at [http://www.fcc.gov/wcb/universal\\_service/welcome.html](http://www.fcc.gov/wcb/universal_service/welcome.html).

<sup>19</sup> See, e.g., *First Report and Order*, *supra*, 12 FCC Rcd at ¶ 187; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at p. 4 (filed with the FCC Aug. 1, 2002) (“CPUC Petition”). The CenturyTel Petition may be found on the FCC’s Electronic Comment Filing System at [http://gullfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi). Please note that the document is listed on the system as received on August 6, 2002.

<sup>20</sup> See CPUC Petition at p. 5 (“Petitioner requests agreement to redefine CenturyTel’s service area to the wire center level”).

<sup>21</sup> CPUC Petition at p. 4.

the requested redefinition to take effect.<sup>22</sup> The FCC similarly approved a petition by the Washington Utilities and Transportation Commission (“WUTC”) and about 20 rural ILECs for the redefinition of the ILECs’ service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners’ request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.<sup>23</sup>

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act. For example, in a recommended decision that was later adopted by the Minnesota Public Utilities Commission, an administrative law judge (“ALJ”) recommended approval of Midwest Wireless Communications, LLC’s proposal to redefine certain rural ILEC service areas to the wire center level, and other rural ILEC service areas below the wire center level.<sup>24</sup> Specifically, the ALJ concluded that “[t]he service area redefinition proposed by Midwest will benefit Minnesota consumers by promoting competitive entry and should be adopted.”<sup>25</sup> Similar conclusions were

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<sup>22</sup> CenturyTel has requested the FCC to reconsider its decision. However, as of this date CenturyTel’s service area redefinition is effective.

<sup>23</sup> *Washington Redefinition Order*, *supra*, 15 FCC Rcd at 9927-28 (footnotes omitted).

<sup>24</sup> Midwest Wireless Communications, LLC, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law, and Recommendation at ¶¶ 53-59 (Minn. ALJ Dec. 31, 2002), *aff’d* by Minn. PUC March 19, 2003 (petition for FCC concurrence not yet filed).

<sup>25</sup> *Id.* at ¶ 59.

reached in decisions granting ETC status to wireless carriers in Arizona, New Mexico and Wisconsin.<sup>26</sup>

As in those cases, the redefinition requested in the instant proceeding will benefit Maine consumers in all reaches of RCC's licensed service territory, who will begin to see a variety in pricing packages and service options on par with those available in urban and suburban areas.<sup>27</sup> They will see infrastructure investment in areas formerly controlled solely by ILECs, which will bring improved wireless service and important health and safety benefits associated with increased levels of radiofrequency coverage. Redefinition will also remove a critical obstacle to competition, consistent with federal telecommunications policy.

CMRS carriers, whose service areas are determined by their FCC licenses, cannot hope to cover the entirety of each of the affected ILEC study areas. Therefore, unless their service areas fortuitously cover an entire study area, CMRS carriers wishing to compete on a level playing field will be forced to compete without receiving the types of subsidies the ILECs have had access to for years. In sum, the requested redefinition is consistent with the pro-competitive policies of Congress and the FCC, and should therefore be granted.

**B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 214(e)(5) of the Act.**

A petition to redefine a LEC service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone

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<sup>26</sup> See Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001, adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002); United States Cellular Corporation, 8225-TI-102 (Wisc. PSC Dec. 20, 2002) (petition for FCC concurrence not yet filed).

<sup>27</sup> See 47 U.S.C. § 254(b)(3).

company.”<sup>28</sup> In the *Recommended Decision* that laid the foundation for the FCC’s *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC’s service area.<sup>29</sup>

First, the Joint Board advised the FCC and the States to consider whether the competitive carrier is attempting to “cream skim” by only proposing to serve the lowest cost exchanges.<sup>30</sup> As a wireless carrier, RCC is restricted to providing service in those areas where it is licensed by the FCC. RCC is not picking and choosing the lowest-cost exchanges; on the contrary, RCC has based its requested ETC service area solely on its licensed service area and will serve customers upon request throughout its designated ETC service area. There is virtually no opportunity to cream skim because “all of the partial exchanges are located in very rural areas of Maine.”<sup>31</sup>

Moreover, as of May 2002, rural ILECs have been required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level.<sup>32</sup> By moving support away from low-cost areas and into high-cost areas, ILECs have had the ability to minimize or eliminate cream skinning.<sup>33</sup> Indeed, in addition to acknowledging that RCC is not selectively serving high-density areas, the MPUC

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<sup>28</sup> 47 C.F.R. § 54.207(c)(1).

<sup>29</sup> *Joint Board Recommended Decision, supra.*

<sup>30</sup> *See Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>31</sup> *See MPUC Order* at p. 11.

<sup>32</sup> *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) (“*Fourteenth Report and Order*”).

<sup>33</sup> *See Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18141(2001).

Order emphasized that the opportunity to disaggregate support “lessen[s] the opportunity for a windfall for RCC should only customers in less rural areas subscribe to RCC’s service.”<sup>34</sup>

RCC has taken the opportunity to review the disaggregation filings submitted by Maine’s ILECs. Several of the affected ILECs elected to disaggregate support under Path 3 by self-certifying disaggregation plans that went into effect immediately upon being filed.<sup>35</sup> If properly done, these plans have effectively moved higher levels of support away from lower-cost, higher-density areas and to areas where costs are higher and service is needed most – thus reducing or eliminating the possibility of cream skimming. The remaining affected ILECs elected not to disaggregate support, presumably because they believed that the apportionment of support corresponded with costs and there were no significant cream skimming opportunities that needed to be addressed.

Even if cream skimming opportunities persist despite explicit rules permitting disaggregation of support, redefinition should not be denied for that reason. Where an ILEC’s disaggregation filing (or failure to file) may harm universal service by creating or perpetuating cream-skimming opportunities, the appropriate response is for the state commission or another party to challenge the ILEC’s filing.<sup>36</sup> Already, at least two states have taken the initiative in this manner to address inappropriate ILEC disaggregation plans.<sup>37</sup> Should the MPUC or the FCC

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<sup>34</sup> MPUC Order at p. 11.

<sup>35</sup> Path 3 filings were made by Community Service Telephone Company, Island Telephone Company, and Somerset Telephone Company.

<sup>36</sup> See 47 C.F.R. §§ 54.315(b)(4), 54.315(c)(5), 54.315(d)(5).

<sup>37</sup> See CPUC Reply Comments at pp. 3-4 (filed Sept. 27, 2003) (addressing cream-skimming concerns by overriding CenturyTel’s Path 3 filing, which divides study area into two large cost zones, and replacing it with disaggregation on a wire-center basis); In the Matter of Disaggregation of Federal Universal Service Support of Asotin Tel. Co. et al., Order Rejecting Disaggregation Filings by Asotin Tel. Co. and CenturyTel, and Directing Rural ILECs to File Disaggregation Plans with the Commission Not Later Than August 23, 2002, Docket Nos. UT-013058 and UT-023020 (Wash. U.T.C. rel. Aug. 2, 2002) (rejecting certain rural ILEC disaggregation filings based on finding that disaggregation “should be done at the exchange level”).

determine that it is necessary to open a proceeding to modify any of the LECs' disaggregation choices, it need not delay the instant request for redefinition pending such modification.<sup>38</sup>

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.<sup>39</sup> In reviewing RCC's application for ETC status, the MPUC weighed numerous factors in ultimately determining that such designation was in the public interest. Congress mandated this public-interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.<sup>40</sup> No action in this proceeding will affect or prejudice any future action the MPUC or the FCC may take with respect to any LEC's status as a rural telephone company, and nothing about service area redefinition will diminish a LEC's status as such.

Finally, the Joint Board recommended that the FCC and the States consider the administrative burden a rural LEC would face by calculating its costs on a basis other than its entire study area.<sup>41</sup> In the instant case, RCC's request to define its service area along boundaries that differ from rural LEC study area boundaries is made solely for ETC designation purposes. Defining the service area in this manner will in no way impact the way the affected rural LECs calculate their costs, but is solely to enable RCC to begin receiving high-cost support in those areas in the same manner as the incumbent LECs. Rural LECs will calculate costs and submit

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<sup>38</sup> See *Federal-State Joint Board on Universal Service Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Order on Reconsideration*, FCC 02-171 at ¶ 17 (rel. June 13, 2002) (rejecting suggestion that disaggregation and targeting of support be tied to redefinition of service areas for ETC designation purposes).

<sup>39</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

data for purposes of collecting high-cost support in the same manner as they do now. Moreover, as the MPUC properly concluded, to the extent any affected rural ILEC will find it necessary to disaggregate support, the benefit of preventing cream skimming will outweigh any administrative burden involved.<sup>42</sup>

### **III. CONCLUSION**

RCC stands ready to provide reliable, high-quality telecommunications service to Maine consumers by investing federal high-cost support in building, maintaining and upgrading wireless infrastructure throughout its licensed service area. The MPUC has declared that RCC's use of high-cost support to increase the availability of additional services and increase investment in rural Maine will serve the public interest.<sup>43</sup> Yet, without the FCC's concurrence with the rural ILEC service area redefinition proposed in the MPUC Order, RCC will not be able to bring those benefits to consumers in many areas in which it is authorized by the FCC to provide service. The redefinition requested in the Amendment will enable RCC's designation as an ETC to take effect throughout its licensed service area in Maine.

The relief proposed by RCC is exactly the same as the relief granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. RCC submits that the benefits of having the company designated throughout its FCC-licensed service area are substantial and those benefits will inure to rural consumers who desire RCC's service, particularly those consumers who are eligible for Lifeline and Link-Up benefits and currently have no choice of service provider. Accordingly,

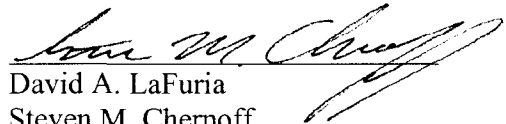
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<sup>42</sup> MPUC Order at p. 11.

<sup>43</sup> *Id.* at p. 8.

RCC requests that the Commission grant its concurrence with the MPUC's decision to redefine the rural LEC service areas listed in Attachment A hereto.

Respectfully submitted,



David A. LaFuria

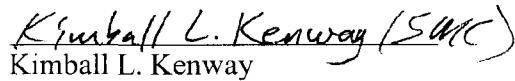
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June 24, 2003



## **ATTACHMENT A**

Attachment A  
Maine Rural LEC Wire Centers to Be Redefined  
Page 1

<u>Company Name</u>	<u>Wirecenter Code</u>	<u>Locality</u>	<u>Covered (Y/N)</u>	<u>Full or Partial</u>
COMMUNITY SERVICE TELEPHONE CO.	EWNTMEXA	E WINTHROP	Y	FULL
COMMUNITY SERVICE TELEPHONE CO.	GRNEMEXA	GREENE	N	N/A
COMMUNITY SERVICE TELEPHONE CO.	LEDSEMEXA	LEEDS	N	N/A
COMMUNITY SERVICE TELEPHONE CO.	LTFTMEXA	LITCHFIELD	Y	FULL
COMMUNITY SERVICE TELEPHONE CO.	MNMOMEXA	MONMOUTH	Y	FULL
COMMUNITY SERVICE TELEPHONE CO.	MTVRMEXA	MT VERNON	Y	FULL
COMMUNITY SERVICE TELEPHONE CO.	WNTHMEXA	WINTHROP	Y	FULL
ISLAND TELEPHONE CO.	FHBRMEXA	FRENCHBORO	N	N/A
ISLAND TELEPHONE CO.	ISHTMEXA	ISLEAUHAUT	N	N/A
ISLAND TELEPHONE CO.	MTNCMEXA	MATINICUS	Y	FULL
ISLAND TELEPHONE CO.	SWISMEXA	SWANS IS	N	N/A
NORTHLAND TELEPHONE OF MAINE, INC.	BRKSMEXA	BROOKS	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	EGLKMEXA	EAGLE LAKE	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	FRBGMEXA	EASTCONWAY	N	N/A
NORTHLAND TELEPHONE OF MAINE, INC.	FRDMMEXA	FREEDOM	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	FTKNMEXA	FORT KENT	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	ISFLMEXA	ISLAND FLS	Y	PARTIAL
NORTHLAND TELEPHONE OF MAINE, INC.	KGMNMEXA	KINGMAN	Y	PARTIAL
NORTHLAND TELEPHONE OF MAINE, INC.	LBRTMEXA	LIBERTY	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	LEE MEXA	LEE	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	LVLLMEXA	LOVELL	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	MTWMMEXA	MATTAWMKEG	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	NFBGMEXA	CHATHAM	N	N/A
NORTHLAND TELEPHONE OF MAINE, INC.	NLVL MEXA	NO LOVELL	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	PATNMEXA	PATTEN	Y	PARTIAL
NORTHLAND TELEPHONE OF MAINE, INC.	PLRMMEXA	PALERMO	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	SHMLMEXA	SHERMAN ML	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	SMMLMEXA	SMYRNA ML	Y	FULL
NORTHLAND TELEPHONE OF MAINE, INC.	STFNMEXA	ST FRANCIS	Y	PARTIAL
NORTHLAND TELEPHONE OF MAINE, INC.	STSPMEXA	STOCKTONSPG	Y	PARTIAL
NORTHLAND TELEPHONE OF MAINE, INC.	WASHMEXA	WASHINGTON	Y	FULL
OXFORD COUNTY TELEPHONE & TELEGRAPH CO.	BCFDMEXA	BUCKFIELD	Y	FULL
OXFORD COUNTY TELEPHONE & TELEGRAPH CO.	CNTNMEXA	CANTON	Y	FULL
OXFORD COUNTY TELEPHONE & TELEGRAPH CO.	NTRNMEXA	NO TURNER	N	N/A
OXFORD COUNTY TELEPHONE & TELEGRAPH CO.	SMNRMEXA	SUMNER	Y	FULL
OXFORD COUNTY TELEPHONE & TELEGRAPH CO.	TRNRMEXA	TURNER	N	N/A
OXFORD COUNTY TELEPHONE & TELEGRAPH CO.	WPRSMEXA	WEST PARIS	Y	FULL
OXFORD WEST TELEPHONE COMPANY	ANDVMEXA	ANDOVER	Y	FULL
OXFORD WEST TELEPHONE COMPANY	BETHMEXA	BETHEL	Y	FULL
OXFORD WEST TELEPHONE COMPANY	HBRNMEXA	HEBRON	Y	FULL
OXFORD WEST TELEPHONE COMPANY	LCMLMEXA	LOCKEMILLS	Y	FULL
OXFORD WEST TELEPHONE COMPANY	NNWYMEXA	NO NORWAY	Y	FULL
OXFORD WEST TELEPHONE COMPANY	RXPDMEXA	ROXBURY PND	Y	FULL
OXFORD WEST TELEPHONE COMPANY	UPTNMEXA	UPTON	Y	PARTIAL
OXFORD WEST TELEPHONE COMPANY	WBTHMEXA	WESTBETHEL	Y	FULL
SOMERSET TELEPHONE CO.	ATHNMEXA	ATHENS	Y	FULL
SOMERSET TELEPHONE CO.	BGLWMEXA	BIGELOW	Y	FULL
SOMERSET TELEPHONE CO.	CBGRMEXA	COBURN GORE	Y	PARTIAL
SOMERSET TELEPHONE CO.	CRBSMEXA	CARRABGSST	Y	PARTIAL
SOMERSET TELEPHONE CO.	EMLKMEXA	EMBDEN LAKE	Y	FULL
SOMERSET TELEPHONE CO.	KGFD MEXA	KINGFIELD	Y	FULL
SOMERSET TELEPHONE CO.	MRCRMEXA	MERCER	Y	FULL
SOMERSET TELEPHONE CO.	NANS MEXA	NORTHANSON	Y	FULL
SOMERSET TELEPHONE CO.	NNPRMEXA	NNEWPORT LD	Y	FULL
SOMERSET TELEPHONE CO.	NRDGMEXA	NORRIDGEWICK	Y	FULL
SOMERSET TELEPHONE CO.	NWVNMEXA	NEWVINYARD	Y	FULL
SOMERSET TELEPHONE CO.	PHLPMEXA	PHILLIPS	Y	FULL

Attachment A  
Maine Rural LEC Wire Centers to Be Redefined  
Page 2

SOMERSET TELEPHONE CO.	ROMEMEXA	ROME	Y	FULL
SOMERSET TELEPHONE CO.	SALMMEXA	SALEM	Y	FULL
SOMERSET TELEPHONE CO.	SMFDMEXA	SMITHFIELD	Y	FULL
SOMERSET TELEPHONE CO.	SOLNMEXA	OLON	Y	FULL
SOMERSET TELEPHONE CO.	SRTNMEXA	STRATTON	Y	PARTIAL
SOMERSET TELEPHONE CO.	STRNMEXA	STRONG	Y	FULL
SOMERSET TELEPHONE CO.	WELDMEXA	WELD	Y	FULL
STANDISH TELEPHONE CO.	DNMKMEXA	DENMARK	Y	FULL
STANDISH TELEPHONE CO.	LMTNMEXA	LIMINGTON	Y	PARTIAL
STANDISH TELEPHONE CO.	SEBGMEXA	SEBAGO	N	N/A
STANDISH TELEPHONE CO.	STFLMEXA	STEEPFALLS	N	N/A
STANDISH TELEPHONE CO.	STNDMEXA	STANDISH	N	N/A
WEST PENOBSCOT TELEPHONE & TELEGRAPH CO.	CORNMEXA	CORINNA	Y	FULL
WEST PENOBSCOT TELEPHONE & TELEGRAPH CO.	EXTRMEXA	EXETER	Y	FULL
WEST PENOBSCOT TELEPHONE & TELEGRAPH CO.	JNBOMEXA	JONESBORO	N	N/A
WEST PENOBSCOT TELEPHONE & TELEGRAPH CO.	STSNMEXA	STETSON	Y	FULL

## **ATTACHMENT B**

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-344

May 13, 2003

RCC MINNESOTA, INC.  
SRCL HOLDING COMPANY  
SACO RIVER COMMUNICATIONS CORPORATION  
Request For Designation As Eligible  
Telecommunications Carrier

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## **I. SUMMARY**

In this Order, we designate RCC Minnesota, Inc. (RCC)<sup>1</sup> as an eligible telecommunications carrier (ETC) pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 (TelAct) and Section 54.201 of the Federal Communications Commission's (FCC) Rules, 47 C.F.R. § 54.201.

## **II. PROCEDURAL HISTORY**

RCC is a predominately rural wireless carrier which serves in many areas throughout the state. On June 7, 2002, RCC submitted an Application seeking designation as an ETC pursuant to Section 214 (e)(2) of the TelAct and 47 C.F.R. § 54.201. RCC requested that it be designated as eligible to receive all available support from the federal Universal Service Fund (USF) including, but not limited to, rural, insular and high cost areas and low income customers.

Following notice of the Proceeding, Petitions to Intervene (all of which were granted) were received from Community Service Telephone Company (CST), the Telephone Association of Maine (TAM), and the Office of the Public Advocate (OPA). Verizon Maine obtained limited intervenor status. CST, TAM and OPA filed comments on July 30, 2002, in response to a July 1, 2002 Procedural Order requesting a preliminary response to RCC's application. After discovery by the intervenors on RCC, a Technical Conference was held on October 8, 2002. Thereafter, pursuant to a November 27, 2002 Procedural Order, TAM, CST and OPA filed Briefs on December 23, 2002.<sup>2</sup> On January 24, 2003, RCC prefiled the testimony of Rick O'Connor, Senior Vice President for RCC's Northern Region (which includes Maine), three State of Maine Legislators (the "Legislative Witnesses") and nine other Maine citizens, together with its

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<sup>1</sup>RCC does business in Maine as Unicel.

<sup>2</sup>All parties were invited to file both testimony and legal briefs. TAM, OPA, and CST only filed legal briefs.

Brief. RCC then responded to a further round of discovery from OPA, TAM and CST on February 14, 2003. On February 26, 2003, RCC filed a letter with the Commission indicating that it would be offering the statements of its Legislative Witnesses as comments from interested parties, but not for evidentiary purposes.

On February 28, 2003, RCC and the OPA filed a Stipulation which recommended that the Commission accept and adopt the Stipulation as its final disposition in the case. On March 3, 2003, both a hearing and oral argument were held in this matter. All parties attended and participated.

On April 17, 2003, the Hearing Examiner issued an Examiner's Report in the form of a Draft Order recommending that the Commission accept the terms of the Stipulation submitted by RCC and the OPA and thereby designate RCC as an ETC. Exceptions to the Examiner's Report were filed by RCC, TAM, and CST.

### III. LEGAL STANDARDS

The Telecommunications Act of 1996 provided for the continuing support of universal service goals by making federal USF available to carriers which are designated as ETCs. Section 214(e)(2) of the TelAct gives state commissions the primary responsibility for designating carriers as ETCs.<sup>3</sup> To be designated an ETC, a carrier must offer all nine of the services supported by the universal service fund<sup>4</sup> to all customers within the ETC's service area and advertise the availability of those services throughout the service area.<sup>5</sup> Further, as a condition for receipt of federal USF support, each year a carrier must certify to the state commission and the FCC that the funds it receives are being used in a manner consistent with the requirements of 47 U.S.C § 254(e).

In the case of an area served by a rural ILEC, the ETC's designation must be in the public interest.<sup>6</sup> There is little guidance, however, within the TelAct

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<sup>3</sup>47 U.S.C. § 214(e)(2). See also Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, ¶ 93 (2000) (*Twelfth Report and Order*).

<sup>4</sup>The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

<sup>5</sup>47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.101(a).

<sup>6</sup>47 U.S.C. § 214(e)(2).

regarding how state commissions should evaluate the “public interest” in this context. Other state commissions have found that they should take into account the purposes of the Act and consider the relative benefits and burdens that an additional ETC designation would bring to consumers as a whole.<sup>7</sup> The FCC, when acting in the place of a state commission because of jurisdictional limitations, has considered such factors as: (1) whether the customers are likely to benefit from increased competition; (2) whether designation of an ETC would provide benefits not available from ILECs; and (3) whether customers would be harmed if the ILEC decided to relinquish its ETC designation.<sup>8</sup>

#### IV. PARTIES’ POSITIONS

##### A. RCC

RCC claims that designation as in ETC is in the public interest because it will allow RCC to “secure USF support for direct investments in Maine’s wireless telecommunications infrastructure – investments that either would not be made in the absence of USF support, or will be substantially delayed.” RCC also claims that competition will be bolstered by its designation.

RCC seeks designation only in those areas covered by its federal licenses. Because federal wireless licenses are granted on the basis of municipal and county boundaries, they do not match wireline exchange boundaries. Thus, RCC also requests that the service areas of 20 rural independent telephone companies (ITCs) be modified so that RCC can meet its federal requirement of offering service throughout the service area. RCC believes that re-alignment of Verizon’s service areas is not required. RCC states that modification of the ITCs’ boundaries will not impact the amount of support the ILEC receives because the support is calculated on a study area, not service area, basis. RCC also claims that the Commission should not be concerned with “cream skimming” because it is willing to serve all areas covered by its federal license – it is not picking and choosing certain areas to serve because they are low cost.

Finally, RCC believes that the Commission’s authority to regulate its practices is severely limited by both federal and state law. Specifically, federal law preempts state commissions from regulating the entry and rates of wireless carriers. RCC urges a broad interpretation of this limitation. In addition, RCC

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<sup>7</sup>See e.g., *In the Matter of the Petition of RCC Minnesota, Inc. For Designation as an Eligible Telecommunications Carrier*, Wash. Utilities and Transportation Commission, Docket No UT-02033, Order (Aug 14, 2002) at ¶ 10.

<sup>8</sup>*In the Matter of the Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket 96-45, DA 02-3181, Memorandum Opinion and Order (Nov. 26, 2002) (*Alabama Order*).

argues that the Commission is a “creature” of the Legislature and that 35-A M.R.S.A. § 102(13) generally precludes Commission jurisdiction over wireless service. RCC acknowledges that 35-A M.R.S.A. § 102(13)(C) provides for Commission assertion of jurisdiction after an investigation and a determination that a wireless carrier is offering basic local exchange service but claims that TAM should have requested such an investigation at the outset of the proceeding and that no factual grounds exist to warrant an investigation.

RCC is a party to the Stipulation that was submitted to the Commission on February 28, 2003. The Stipulation is discussed in Section E below.

B. TAM

TAM argues that RCC has not met its burden of proof to show that it meets the requirements for becoming an ETC. TAM argues that the goal of universal service is not increased competition, but rather ensuring that as many people as possible are connect to the public switched network. It questions why RCC’s designation would be in the public interest, especially in light of the fact that RCC admits that its service would not likely be used as a substitute for landline phones but instead as a secondary line for mobile telecommunications purposes. Thus, TAM believes that RCC has not shown that RCC’s use of federal USF monies will advance universal service goals in Maine and, accordingly, be in the public interest.

TAM further argues, however, that if the Commission does decide to grant RCC ETC status, RCC should be subject to the same obligations as wireline ETCs. TAM also takes the position that before the Commission can designate RCC as an ETC it must find under 35-A M.R.S.A. § 102(13) that RCC is offering basic local exchange service and thus is subject to Commission regulation, including the requirements of Chapter 290. TAM argues that while the Commission is preempted from regulating the entry and rates of wireless carriers, the FCC has made clear that the state commissions may regulate wireless carriers in the areas of billing practices, customer protection, and matters relating to the provisioning of universal service.

C. CST

CST urges the Commission not to grant RCC’s ETC application because it believes the consequences of granting ETC status to wireless carriers such as RCC are injurious to the public interest and outweigh any benefits that might exist. CST outlined a number of specific concerns, most of which center on four themes. First, CST believes that the potential positive effect on universal service resulting from granting ETC status to wireless carriers is *de minimis* because of Maine’s already very high universal service penetration. Second, CST is concerned that support for wireless carriers will enable them to “take”



customers from rural carriers, resulting in lower revenue streams to rural carriers who will then look to both federal and state USF mechanisms for more support as well as to customers for higher rates. Third, CST believes that the strain on state and federal USF mechanisms will become politically impossible to support and that customers in rural areas will suffer because of increased rates. Finally, CST argues that there is no assurance that receipt of USF support will result in RCC doing anything different from what it would have done without USF support and that approval of RCC's Request could create additional costs for rural ILECs by causing them to redefine service areas.

D. OPA

The OPA's position throughout this proceeding has been that RCC's application should only be approved if RCC satisfies "certain conditions required by the public interest." In its December 23, 2002 Comments, the OPA outlined the conditions it sought, namely, that RCC offer a "basic service" plan that is priced at or below the basic rates of other local providers and that RCC provide specific information to the Commission concerning how the USF funds are being used to improve wireless coverage of wireless areas in Maine. The OPA also took the position in December that the Commission should assert jurisdiction over RCC pursuant to 35-A M.R.S.A. § 102(13)(C) and that all Commission Rules applicable to wireline ETCs should apply equally to RCC.

In late February, the OPA modified its position when it and RCC came to an agreement regarding the terms under which RCC should be granted ETC status. The OPA's modified position is discussed below.

E. Terms of the Stipulation

On February 28, 2003, the OPA and RCC submitted a Stipulation "intended to resolve the outstanding issues" in this proceeding. It appears that TAM and CST were not included in the early stages of discussions between the OPA and RCC but that they were advised of the discussions several days before the Stipulation was filed and were given an opportunity to participate in the discussion at that time.

The Stipulation provides for the following resolution of the case:

- a. RCC is designated an ETC in the areas where it is licensed to provide wireless service in Maine, thus necessitating the redefinition of certain ILEC service areas;
- b. RCC will make good faith efforts to establish a call placement service which would allow persons to reach RCC customers even when the person does not know the customer's number;

- c. RCC will establish a Universal Service Rate Plan for \$15.00 per month; and
- d. RCC will comply with Chapters 290 and 294 of the Commission's Rules.

At the hearing, both the OPA and RCC urged the Commission to adopt the Stipulation as a fair resolution of the matter. The OPA stated that the most obvious benefit of RCC's designation would be additional monies for infrastructure improvement in Maine. The OPA also noted that the Stipulation included benefits that were not originally included in RCC's application, including the provision of a basic service plan and compliance with Chapter 290 of the Commission's Rules. Finally, the OPA responded to TAM's concerns regarding RCC compliance with other Commission rules by commenting that there were no "burning issues" associated with those rules and thus no immediate need to pursue their enforcement against RCC.

TAM, both in written comments and at the hearing, argued that the Stipulation falls far short of the necessary safeguards to protect customers of an ETC, whether it is wireless or wireline, and to ensure that the goals of universal service are truly met. TAM believes that the Stipulation is not in the public interest, and would undermine the requirement that the Commission find that granting RCC ETC status is in the public interest before approving RCC's request to be certified as an ETC. Moreover, TAM believes that the Commission should have regulatory jurisdiction over RCC pursuant to 35-A MRSA § 102(13)(C) and that this issue would be best resolved as a part of this proceeding. Additionally, TAM believes that, in addition to Chapter 290, RCC should be required to comply with many other Commission rules, such as Chapters 130, 140 210, 296, 297, and 895. Ultimately, however, TAM's greatest concern, and the focal point of its arguments, is the long-term viability of universal service (and thus the viability of the independent telephone companies that rely upon universal service) if RCC and other wireless carriers are certified as ETCs.

CST's arguments against both RCC's application and the Stipulation focused on the public interest standard. CST argued that granting RCC's application might be at odds with statutes requiring that telephone service be adequately provisioned and reasonably priced. CST's arguments were based upon concerns similar to those of TAM regarding the long-term viability of universal service if wireless carriers are certified as well as the competitive impact of ETC designation on the ITCs. CST also raised arguments relating to its need to average costs over its service area in order to meet requirements that pricing be averaged.

## V. DECISION

Based upon the record before us and for the reasons discussed below, we find that RCC meets all of the requirements of 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201 and designate RCC as an ETC in those areas covered by its federal wireless license in Maine.<sup>9</sup>

### A. Required Service and Advertising

As stated above, an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>10</sup> Early in the proceeding there were concerns regarding the ubiquity of RCC's service within its territory and the quality of the service provided. RCC witness Rick O'Connor testified that RCC did, in fact, offer the required services and advertise their availability. He further testified that RCC would agree to supply service to anyone who asked for it within its designated service area. At the hearing, none of the parties cross-examined Mr. O'Connor regarding these assertions nor did the parties offer any testimony to controvert Mr. O'Connor's assertions.

Based upon our own review of the record, we find that RCC does offer all of the required services and that it does (or will) advertise their availability. With regard to concerns relating to ubiquity of service and the obligation to serve all customers, we first find that the FCC's rules do not require a carrier to have the capability to serve all customers at the time of designation, only that the carrier be willing to serve all customers.<sup>11</sup> The FCC has said that to

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<sup>9</sup>In reviewing a stipulation submitted by the parties to a proceeding, we consider whether the parties joining the stipulation represent a sufficiently broad spectrum of interests such that there is no appearance or reality of disenfranchisement, whether the process was fair to all parties, and whether the stipulated result is reasonable and in the public interest. Consumers Maine Water Co., Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739 (Me. P.U.C. July 3, 1997). The Hearing Examiner recommended accepting the Stipulation based upon a finding that all of the conditions for accepting a Stipulation were met. In its Exceptions, CST argued that the Commission should not accept the Stipulation because it does not represent the full spectrum of interests involved in the case and does not provide a basis for findings of fact on the public interest standard. We find it unnecessary to reach the question of the validity of the Stipulation because the record before us contains sufficient information upon which to base our decision. Thus, we do not address in detail the concerns of CST about the full spectrum of interest signing onto the Stipulation. We do note, however, that TAM and CST were afforded an opportunity to participate in the settlement discussions, albeit later in the process. Further, neither TAM nor CST complained about the settlement process during the hearing and oral argument held on March 5, 2003.

<sup>10</sup>47 U.S.C. § 214(e)(1).

<sup>11</sup>See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 at 15175, ¶ 17 (2000) (*Declaratory Ruling*), *pet'n for recons. pending*.

“require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service.”<sup>12</sup> Instead, “a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service.”<sup>13</sup> Section 22.99 of the FCC’s rules acknowledges the existence of “dead spots” in cellular service and states that “[s]ervice within dead spots is presumed.”<sup>14</sup> Finally, we take judicial notice of the extensive advertising done by RCC and other cellular providers in Maine and we accept RCC’s commitment to use a portion of its advertising budget to increase customer awareness of Lifeline and Link-Up.

B. Public Interest

The concept of universal service is a broad one, especially as articulated in TelAct. Universal service should include choice in providers and access to modern services. Designating RCC as an ETC will allow rural customers to enjoy the same choices in telecommunications that urban customers have, including additional access to broadband through wireless devices. Further, because of the way federal USF is calculated, designation of RCC will not take any money away from Maine’s rural ILECs. Indeed, neither TAM nor CST specifically refuted the assertions by RCC that the support to all the incumbent wireline carriers will be unchanged by the granting of ETC status to RCC. Finally, CST’s claim that granting RCC ETC status could result in higher rates for incumbent customers is not supported by any evidence or analysis.

In its Exceptions, CST argues that the public interest standard has not been met. Specifically, CST claims that the Examiner’s Report did not make findings on many public interest issues, such as the impact on the universal service fund, rates of rural telephone companies, and the harm to rural telephone companies by increased competition.

While we acknowledge the possibility raised by CST (and TAM) that providing USF support for wireless service (which in most instances will be a second line) may ultimately not be a sustainable policy and may have competitive impacts on ITCs, we find that RCC meets the statutory requirements and that Maine consumers (who pay into the federal USF) should not be denied benefits. The public interest is not as narrow as CST has defined it. The evidence that RCC will use the funds made available by ETC status to increase the availability of additional services and increase investment in rural Maine supports our conclusion that granting ETC status is in the public interest.

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<sup>12</sup>Id. at ¶¶ 12-14.

<sup>13</sup>Id. at ¶ 24.

<sup>14</sup>Id.

At this time, there is no evidence before us to suggest that the list of horrors advanced by CST will, in fact, occur. As the events of the last three years have shown, predicting the future in the telecommunications arena has proven to be one of the fastest roads to bankruptcy. Absent good reason to believe that an adverse consequence will occur, or that the effects will be severe and irreversible<sup>15</sup>, we are unwilling to forgo the benefits that are likely to be achieved by granting the petition. Further, while granting RCC status as an ETC may exacerbate CST's concerns, it does not bring them into existence. Federal policy already allows wireless carriers to compete with rural telephone companies. Thus, the FCC has already determined that the benefits of having this new and potentially competing technology outweigh the harm that may flow to the rural telephone companies or the potential impact on the USF.

Finally, we do not believe this proceeding is the appropriate forum for resolving many of the issues raised by TAM and CST. The FCC has recently requested the Federal-State Joint Board on Universal Service (Joint Board) to provide recommendations to the FCC relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as issues relating to USF support for second lines.<sup>16</sup> Issues of rate rebalancing and deaveraging are very complex. An exploration of those issues will require the development of an extensive record and consideration of many factors beyond the scope of this proceeding. We do not believe the decision we make today will foreclose our ability to address the issues in full at the appropriate time.

### C. Service Area Boundaries

No party has contested RCC's designation in Verizon's study area. Further, no party has disputed RCC's assertion that the Commission does not have to re-draw Verizon's service area boundaries to conform with RCC's licensing boundaries but instead may designate RCC's ETC service area as those portions of Verizon's service area covered by RCC's cellular license. It appears from our review of the FCC's recent decision designating RCC as an ETC in Alabama that RCC's assertions are correct.<sup>17</sup>

Differences in RCC coverage and ITC boundaries, as well as federal law regarding rural study areas, require a different approach in rural independent telephone company areas. Under section 214(e)(5), a rural company's "service area" (for purposes of competitive ETC coverage) is the

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<sup>15</sup>This possibility is greatly reduced by the requirement that we review the ETC designation annually.

<sup>16</sup>See Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 02-307, Order (rel. Nov. 8, 2002).

<sup>17</sup>*Alabama Order* at ¶ 33.

same as the company's "study area" (used to determine USF) unless and until the FCC and the State, after taking into account recommendations of the Joint Board, establish a different definition of service area for such company.

In the FCC's *RTF Order*, the FCC determined that USF support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area.<sup>18</sup> Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service.<sup>19</sup> Section 54.315 of the FCC's rules required rural carriers to choose one of three disaggregation paths by May 15, 2002. All carriers in Maine, except CST, Island, and Somerset chose Path 1, which does not require them to disaggregate support.<sup>20</sup> Community Service, Island, and Somerset chose Path 3, which required them to self-certify to the state commission that they had disaggregated in compliance with FCC rules.

The circumstances described above require us to take two different approaches to certifying RCC in ITC areas. First, we address rural ILECs whose entire study area is covered by RCC, namely Bryant Pond, China, Cobbosseecontee, Hampden, Hartland & St. Albans, Lincolnville, Mid-Maine, Saco, Sidney, Tidewater, Unity and Warren. For these companies, no additional steps need be taken by the Commission to certify RCC because their service areas and study areas are the same. There is a question, however, concerning whether RCC's certification would cause these ITCs to reconsider their decision not to disaggregate and whether that causes a significant administrative burden. In its Exceptions, TAM argues that while it cannot provide specific information on the costs and administrative burdens associated with disaggregating, rural telephone companies should not be forced to disaggregate. TAM claims that "catering" to RCC impedes the ability of the ITCs to make their own business choices regarding disaggregation.

While disaggregation may impose some administrative burden, the benefit of preventing "cream skimming" by any future CLEC ETCs is generally desirable, even if RCC is not granted ETC status. Neither TAM nor CST has provided any detailed analysis of the costs or burdens associated with disaggregating USF support. CST has stated that the disaggregation it undertook voluntarily pursuant to the *RTF Order* took some time and effort to determine how to disaggregate. However, CST also acknowledged that disaggregation itself did not impact CST's bottom line. Further, we do not see disaggregation to the wire center level as a serious cause for concern. Most wire

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<sup>18</sup>See *RTF Order*, 16 FCC Rcd at 11302, ¶ 145.

<sup>19</sup>*Id.*

<sup>20</sup>Path 1 remains in place for at least four years unless modified by a state commission to require targeting and disaggregation as provided in Path 2 or Path 3.

centers in Maine contain a mix of downtown, suburban, and rural areas. Even if RCC can only service one exchange rather than a carrier's entire study area, RCC will still be serving many of the more rural customers, which are generally more expensive to serve.

Thus, we certify RCC as an ETC in the areas described above and leave it up to the individual ITC to determine whether disaggregation of support is needed. If they choose to disaggregate further, they should file a petition with the Commission.

The second approach<sup>21</sup> to certification involves rural ILECs where RCC does not serve the full study area but either completely covers some of the ILEC's individual wire centers or covers only part of a specific wire center. (See Attachment A.) In order to certify RCC in these wire centers, we must first make certain findings relating to recommendations made by the Joint Board regarding rural study areas. The Joint Board factors to be considered include: (1) the potential for "cream skimming" if a competitive ETC does not have to serve the full study area; (2) the different competitive footing of rural telephone companies under the TelAct; and (3) the administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level.<sup>22</sup> After we make our findings, either RCC or the Commission must petition the FCC for concurrence with our determination.

We find that the cream-skimming concerns are alleviated by the fact that RCC has not specifically picked the exchanges or partial exchanges that it will serve but instead the area was defined by the FCC in its wireless licensing process. We are not concerned the RCC is targeting any specific areas or that any of the partial exchanges would result in a windfall due to service to a highly populated area. Indeed, all of the partial exchanges are located in very rural areas of Maine. We further find that these companies, like the companies discussed above, have the option of disaggregating their USF support beyond just wire center boundaries, thereby lessening the opportunity for a windfall for RCC should only customers in less rural areas subscribe to RCC's service.

Thus, for the companies listed in Attachment A, we will require that their service area be disaggregated into service areas that are coterminous with wire center boundaries. To the extent that these companies wish to further disaggregate support, they should file a petition with the Commission. Finally, RCC should petition the FCC for concurrence in the new service area definitions.

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<sup>21</sup>The Examiner's Report incorrectly stated that a third approach involving a waiver from the FCC was necessary to certify RCC in areas where it only covers part of an exchange. In its Exceptions, RCC correctly pointed out that the FCC found that wireless carriers need only service those portions of a wire center covered by their federal wireless license. *Alabama Decision* at ¶ 33.

<sup>22</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996) (*Recommended Decision*).

D. Compliance with Commission Rules and Other Conditions

Finally, with regard to RCC's status as an ETC and the jurisdiction of the Commission, we concur with the result reached in the Stipulation, namely, that RCC must comply with the two Rules which directly apply to ETCs – Chapters 290 (consumer protection) and 294 (Lifeline) but that RCC is not considered a provider of basic service under 35-A M.R.S.A § 102(13)(C) and therefore is not subject to the Commission's general jurisdiction.

CST and TAM<sup>23</sup> both argued that the Commission should assert jurisdiction over RCC and then require compliance with all Commission Rules but both failed to explain the nexus between RCC gaining ETC status and a finding under section 102(13) that RCC was providing basic service. Generally speaking, however, the service RCC will provide as an ETC is the same as it provides today. There is nothing about our designation that changes the type of service being provided by RCC. We agree with the OPA that other than Chapters 290 and 294, we do not see any current issues involving RCC or wireless carriers that need to be addressed by our current rules. If, at some future time, a specific showing can be made that circumstances have changed significantly, we can revisit this decision.

Finally, with regard to the two remaining conditions contained in the Stipulation (establishment of a call placement service and a \$15.00 per month USF plan), we find that the record supports the benefits of such services to Maine consumers. While the terms of the Stipulation release the parties from their obligations under the Stipulation if the Commission fails to accept the Stipulation, we encourage RCC to follow through on the agreements embodied in the Stipulation. Rather than address the legal question of whether the Commission could order RCC to comply with the conditions at this time, we ask

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<sup>23</sup>TAM also argued that RCC should not be designated an ETC unless it also assumed carrier of last resort responsibilities in its service area. The FCC specifically rejected adding such a requirement for ETC designation. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8855 (1997).



RCC to notify the Commission within ten (10) of the date of this Order whether it intends to comply.<sup>24</sup> If RCC chooses not to comply, we may re-open the record for argument on these issues.

O R D E R E D

Dated at Augusta, Maine, this 13<sup>th</sup> day of May, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

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<sup>24</sup>We would treat a statement that it intends to comply as consent to making such compliance a condition of this Order.

## CERTIFICATE OF SERVICE

I, Janelle T. Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 24<sup>th</sup> day of June, 2003, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *PETITION OF RCC MINNESOTA, INC., FOR REDEFINITION OF RURAL TELEPHONE COMPANY SERVICE AREAS* filed today to the following:

\*Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8B201  
Washington, D.C. 20554

\*Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
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Washington D.C. 20554

\*Commissioner Kevin J. Martin  
Federal Communications Commission  
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Janelle Wood

\*via hand delivery